

BILL NO. S-93-10-13

SPECIAL ORDINANCE NO. S-81-93

AN ORDINANCE approving CONTRACT #6313-93, HARDEN STREET - HARMAR STREET TO CHUTE STREET, CURBS & RESURFACING between DEHNER CONSTRUCTION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT #6313-93, HAYDEN STREET - HARMAR STREET TO CHUTE STREET, CURBS & RESURFACING by and between DEHNER CONSTRUCTION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the improvement of Hayden Street from Harmar Street To Chute Street by replacing curbs and resurfacing;

involving a total cost of One Hundred Four Thousand Eight Hundred Twenty-One and 50/100 Dollars (\$104,821.50).

SECTION 2. Prior Approval has been requested from Common Council on SEPTEMBER 28, 1993. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Sam Talarico
Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCauley
J. Timothy McCauley, City Attorney

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is by and between the CITY OF FORT WAYNE, INDIANA (hereafter called OWNER) and DEHNER CONSTRUCTION, INC. (hereafter called

CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The project is generally described as follows:

RESOLUTION NO. 6313-93 - HAYDEN STREET: HARMAR TO CHUTE

ARTICLE 2. ENGINEER

The project has been designed by A.J. DODZIK, P.E. of Fort Wayne, Indiana, who is hereafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Work will be substantially completed within seventy five (75) consecutive calendar days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within ninety (90) consecutive calendar days from the date when the Contract Time commences to run.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essences of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in a legal or arbitration proceeding. Accordingly, OWNER and CONTRACTOR agree that CONTRACTOR will pay as Liquidated Damages, a sum which shall be based upon the actual dollar cost incurred by the OWNER due to the CONTRACTOR'S delay, beyond the time specified in paragraph 3.1 for Substantial Completion. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER an amount equal to the actual dollar cost incurred due to the CONTRACTOR'S non-performance after the time specified in paragraph 3.1 for Completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, in current funds, as follows: \$104,821.50. This Contract Price includes:

SURFACE MILLING, RESURFACING, NEW CURBS, SIDEWALKS,
RAMPS AND MISCELLANEOUS CONSTRUCTION

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Application for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Application for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction, as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

Ninety five percent (95%) of Work completed.

Ninety five percent (95%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to ninety eight percent (98%) of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

ARTICLE 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions may bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into the Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examination, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Performance and Payment Bonds per the Project Manual.
- 8.3 Certificates of Insurance per the Project Manual.
- 8.4 Notice of Award.
- 8.5 The Project Manual including the General Conditions, Supplementary Conditions, any and all special requirements and/or provisions, specifications, construction standards and all other sections of the Project Manual except the Bid Documents.
- 8.6 Drawings (Plans), consisting of sheets numbered 1 through 7, inclusive.
- 8.7 Addenda Number(s) 1.
- 8.8 CONTRACTOR'S BID (pages P/1 to P/5, inclusive).
- 8.9 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions. The documents listed in Paragraphs 8.2 eg. seq. above are not attached to the Agreement but are to be maintained as a matter of record and reference at the office of the ENGINEER, CONTRACTOR and OWNER.

ARTICLE 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but not without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This agreement will be effective on 10-6, 19 93.

CONTRACTOR

OWNER

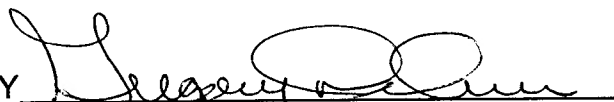
DEHNER CONSTRUCTION, INC.

(Company Name)

CITY OF FORT WAYNE, IN

(City, Town or County Name)

BY


(Name & Title)
PRESIDENT

BOARD OF PUBLIC WORKS

(Board Name)

Address for Giving Notices

5406 Winchester Road
Fort Wayne, Indiana 46819

BY

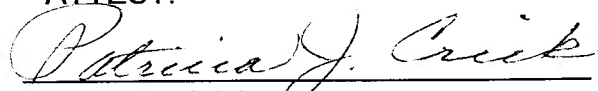


Charles E. Layton, Director


C. James Owen

Katherine A. Carrier

ATTEST:


Patricia J. Crick
Clerk

MBE/WBE RIDER
FOR FEDERALLY-FUNDED PROJECTS THROUGH THE CITY OF FORT WAYNE

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and DEHNER CONST. CO., hereinafter referred to as "Contractor",
WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the Contract 6313-93, Hayden Street - Harmar Street to Chute Street,

which project was bid under Resolution Number 6313-93; and

WHEREAS, Contractor agrees that the goal for qualified Minority-owned Business Enterprises or Women-owned Business Enterprises, hereinafter sometimes referred to as "MBE/WBE's" as subcontractors on this project is 10% of the contract amount;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.
2. MBE/WBE Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this MBE/WBE Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a

good faith effort to subcontract 10 % of the contract amount to Minority/Women business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this MBE/WBE Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this MBE/WBE Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the MBE/WBE goal stipulated in this MBE/WBE Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this MBE/WBE Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this MBE/WBE Rider.

3. Request For Waiver: If at the time final payment application is made, contractor has not attained the 10 % MBE/WBE goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % MBE/WBE goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

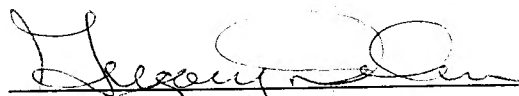
5. Good Faith Per Se: In any case, a Contractor shall be deemed to have made good faith efforts at compliance where MBE/WBE's have been subcontracted for every sub-contract for which there are qualified MBE/WBE's available.

6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne MBE/WBE Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this MBE/WBE Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

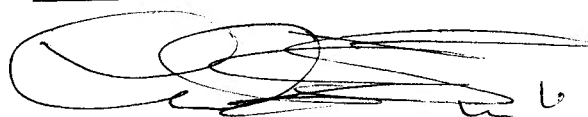
IN WITNESS WHEREOF, the parties have executed this MBE/WBE Rider this 6 day of OCTOBER, 1993.

By:


Contractor

By:

Board of Public Works


Charles E. Layton

Katherine Carrier


C. James Owen

ATTEST:


Patricia J. Crick, Clerk

Read the first time in full and on motion by Talarico, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 10-12-93

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Talarico, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LAST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>		<u>1</u>	<u>2</u>
BRADBURY				<u>✓</u>
EDMONDS	<u>✓</u>			
GiaQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG			<u>✓</u>	
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 10-26-93

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) _____ (APPROPRIATION) _____ (GENERAL) _____ (SPECIAL) _____ (ZONING) _____ ORDINANCE RESOLUTION NO. 8-81-93 on the 26th day of October, 1993

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)
Thomas P. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of October, 1993, at the hour of 2:30 o'clock P. M., E.S.T.

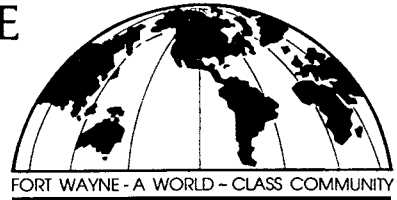
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 2nd day of November, 1993, at the hour of 10:30 o'clock A M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR



THE CITY OF FORT WAYNE



Paul Helmke
Mayor

September 28, 1993

The Common Council
Fort Wayne, Indiana

D-93-10-13

Re: Resolution #6313-93, Hayden Street - Harmar Street to Chute Street,
Curbs & Resurfacing (CDBG)

Dear Members of Council:

The subject contract was awarded to Dehner Construction in the amount of
\$104,821.50.

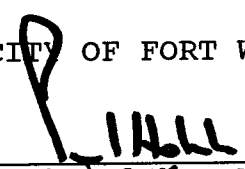
Refer to bid analysis sheet.

The Board of Public Works respectfully requests "Prior Approval" on this
contract so that the contractor may take full advantage of this current
construction season.

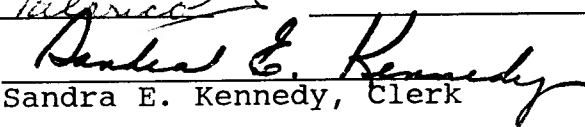
BOARD OF PUBLIC WORKS

CITY OF FORT WAYNE


Charles E. Layton, Director


Paul Helmke, Mayor

ATTEST:


Sandra E. Kennedy, Clerk

cn
attachment

TITLE OF ORDINANCE: Contract #6313-93, Hayden Street - Harmar Street to Chute Street, Curbs & Resurfacing

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract #6313-93 is for the improvement of Hayden Street from Harmar Street to Chute Street by replacing curbs and resurfacing. Dehner Construction is the contractor.

PRIOR APPROVAL WAS RECEIVED ON 9/28/93.

EFFECT OF PASSAGE: Improvement by replacing curbs and resurfacing.

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$104,821.50 1993 CDBG

ASSIGNED TO COMMITTEE:

BILL NO. S-93-10-13

REPORT OF THE COMMITTEE ON
PUBLIC WORKS

SAMUEL J. TALARICO - CHAIRPERSON
CLETUS R. EDMONDS - VICE CHAIRPERSON
GIAQUINTA, BRADBURY

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving CONTRACT
#6313 HARDEN STREET - HARMAR STREET TO CHUTE STREET, CURBS &
RESURFACING between DEHNER CONSTRUCTION and the City of Fort Wayne,
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Sam J. Talarico
CR Edmond

DATED: 10-26-93.

Sandra E. Kennedy
City Clerk